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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/808,490	03/14/2001	Brian F. Monahan	2001-1	3622

7590
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Sandy Hook, CT 06482

01/08/2008

EXAMINER

LOFTIS, JOHNNA RONEE

ART UNIT	PAPER NUMBER
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3623

MAIL DATE	DELIVERY MODE
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01/08/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

09/808,490

Applicant(s)

MONAHAN, BRIAN F.

Examiner

Johnna R. Loftis

Art Unit

3623

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 October 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-15 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. The following is a final office action upon examination of application number 09/808,490. Claims 1-15 are pending and have been examined on the merits discussed below.

Response to Arguments

2. Applicant's arguments filed 10/15/07 have been fully considered but they are not persuasive. While the claims are directed to selecting two media, the methodology is the same whether one chooses 1 media or 5 different media. Data for an individual media is collected, using well known methods. This data is then stored and analyzed to determine effectiveness. This is precisely what is shown in d'Eon. Canon was introduced to show that one of ordinary skill in the art at the time of the invention was aware that utilizing an advertising optimization methodology allows companies to interactively create, score, rank and compare various proposed or actual advertising strategies. Canon also specifies that the methodology is equally applicable to television viewing, web visitation, readership of magazine and newspaper. In view of this, Examiner upholds prior rejections in view of d'Eon, Robinson and Canon. It would have been obvious to one of ordinary skill in the art, based on the teachings of d'Eon, Robinson and Canon to employ a system wherein advertising media are evaluated to determine effectiveness thereby necessitating modification of advertising media. The combination of these references yields the predictable results of producing an evaluation of advertising media to determine if modification is necessary.
3. The Declaration under 37 CFR 1.132 filed 10/15/07 is insufficient to overcome the rejection of claims 1-15 based upon d'Eon et al, Robinson and Cannon as set forth in the last

Office action because: the Declarations claim that technology at the time of the invention could not provide the granular data necessary for the ongoing performance evaluation of offline advertising media. Examiner respectfully disagrees. Canon is directed to a database mining engine (DME) that collects advertising data on an ongoing basis wherein information is tracked allows companies to compare various advertising strategies.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. **Claims 1-15** are rejected under 35 U.S.C. 103(a) as being unpatentable over d'Eon, US 6,006,197 in view of Robinson, US 5,918,014, further in view of Cannon, US 6,286,005.

As per **claim 1**, d'Eon teaches means for selecting marketing communications activity (column 2, lines 45-55); means for collecting on an ongoing basis performance data of the selected marketing communications activity (column 4, lines 23-34 – the advertisement activity is collected); means for processing on an ongoing basis the marketing communications activity performance data wherein the communication activities are integrated with strategic business objectives there by permitting rapid monitoring on an ongoing basis of the performance of the marketing communication activities (column 6, lines 16-67 – the data collected is correlated into tables to show the number of impressions associated with each advertisement to indicate

effectiveness); means for evaluating on an ongoing basis processed performance and business objective data of all marketing communications activity of said common reporting interface thereby determining the contribution of the marketing activity to the business goals(column 6, lines 44-67 – data is correlated into tables to show effectiveness of the advertisement), but does not explicitly teach means for reacting concurrently with said evaluating by modifying if necessary ongoing marketing communications activity. Robinson teaches modifying or changing advertisements using a rotation schedule to maximize advertising effectiveness based on predicted likelihood that the user will be interested in the given ad (column 4, lines 8-67). Since d'Eon teaches assessing the effectiveness of Internet advertisements to more efficiently allocate Internet advertising resources, it would have been obvious to one of ordinary skill in the art at the time of the invention to incorporate Robinson's real-time analysis of the effectiveness of web advertisements to modify the marketing activity. The incorporation of the real-time updating would ensure the most effective advertising or marketing material is being used.

In addition, while the combination of d'Eon and Robinson teaches gathering performance information regarding internet marketing performance, the combination does not explicitly teach a business enterprise selecting at least two marketing communications activities selected from the group of: magazine, newspaper, radio, television and website. However, based on Cannon (column 6, lines 1-14), it is old and well known to gather and analyze other types of advertising media such as television, magazines and newspapers to determine effectiveness. It would have been obvious to one of ordinary skill in the art at the time of the invention that a business would carry out more than one type of advertising/marketing communications and would gather and

analyze performance data for each type of marketing communications to gain useful information to make advertising efforts more effective.

As per **claim 2**, d'Eon teaches evaluating the processed performance data of marketing communications activity comprises evaluation relative to the expected contribution of marketing communications to the business objectives of the business enterprise (column 7, lines 7-14 – columns are displayed showing average revenue generated from each advertisement).

As per **claim 3**, d'Eon teaches the marketing communications activity comprises functions and associated financial costs thereof comprising printed or electromagnetic-based media (column 3, lines 7-16 – advertising cost information is included in the evaluation of the advertising).

As per **claim 4**, d'Eon teaches the processing of marketing communications activity data further comprises historical performance data (column 4, lines 23-34 and column 5, lines 35-67 – the performance data of the advertisement is collected through tracking).

As per **claim 5**, d'Eon teaches the media comprises the Internet (column 4, lines 23-34 – the system collects information on Internet advertising through the World Wide Web).

As per **claim 6**, d'Eon teaches the marketing communications activity data is collected by manual, electronic or telephonic monitoring means (column 4, lines 23-34 – the data is collected electronically - the system collects information on Internet advertising through the World Wide Web).

As per **claim 7**, d'Eon teaches the data processing of performance data integrates varied data sources and comprises a common electronic reporting interface means (column 6, lines 44-55 – the resulting outcome is output via, e.g., the monitor, printer or some other output device).

As per **claim 8**, d'Eon teaches the performance data sources comprise media contracts, media delivery information, survey information, call center volume, store foot traffic, sales scanner data, focus group responses or web site traffic or combination thereof (column 4, lines 24-34 – collects web site traffic).

As per **claim 9**, d'Eon teaches the performance data is processed, organized and maintained in a centralized database, multiple databases, or combination thereof (column 4, lines 24-34 – the tracking software collects the information and as shown in figure 1, it is stored in a computer database).

As per **claim 10**, d'Eon teaches the business objectives comprise customer acquisition, customer retention, branding, intellectual property acquisition, conversion, insight, development of international business relationships or customer bases, increased revenues, diversification of products or services, increased profits, personnel recruitment, or public relations or combination thereof (column 7, lines 7-14 – columns are displayed showing average revenue generated from each advertisement).

As per **claim 11**, d'Eon teaches the rapid response marketing system is maintained on an ongoing basis for the duration of the multiple medium marketing communications campaign (column 4, lines 23-34 – each time the advertisement is clicked by a user, the tracking software collects information).

As per **claim 12**, d'Eon teaches the reacting to the evaluation of marketing communications activity involves no modification, or modification of marketing activity by increasing or decreasing some or all of marketing communications activities, deleting selected activities, adding new marketing activities, or altering the messaging of selected marketing

communications activity (column 1, lines 45-55 – the overall goal of the d'Eon reference is to determine which advertising campaigns are effective therefore it is inherent to d'Eon that the evaluation data is used to determine if an advertising activity should be modified, deleted or if a new activity should be added).

As per **claim 13**, D'Eon teaches identifying the expected contribution of marketing communications to the business objectives of the business enterprise (column 7, lines 7-14 – columns are displayed showing average revenue generated from each advertisement); identifying industry marketing communications information, past and current marketing communications activities and history thereof, if any, of the business enterprise (column 6, lines 44-55 – each advertisement activity is associated with the number of impressions collected to determine effectiveness); selecting a means for monitoring the marketing tools on an ongoing basis relative to said business objectives (column 4, lines 23-34 – each time the advertisement is clicked by a user, the tracking software collects information; column 7, lines 7-14 – columns are displayed showing average revenue generated from each advertisement); but does not explicitly teach selecting means for reacting concurrently with said evaluating of performance metrics wherein modification of the marketing communications may be done while marketing communications are ongoing. Robinson teaches modifying or changing advertisements using a rotation schedule to maximize advertising effectiveness based on predicted likelihood that the user will be interested in the given ad (column 4, lines 8-67). Since d'Eon teaches assessing the effectiveness of Internet advertisements to more efficiently allocate Internet advertising resources, it would have been obvious to one of ordinary skill in the art at the time of the invention to incorporate Robinson's real-time analysis of the effectiveness of web advertisements to modify the

marketing activity. The incorporation of the real-time updating would ensure the most effective advertising or marketing material is being used.

The combination of D'Eon and Robinson teaches evaluating the effectiveness of an Internet marketing campaign to determine which advertising efforts are effective and also teaches the effectiveness of an advertisement is based on revenue. Although the combination does not explicitly teach identifying performance metrics of the marketing communications comprising a performance model or standards to measure accomplishment of the business objectives; identifying available interactive marketing tools; selecting a marketing communication strategy comprising selecting marketing tools of the business enterprise or available interactive marketing tools sufficient to accomplish the expected contribution of marketing communications to the business objectives of the business enterprise; selecting a means for evaluating on an ongoing basis the identified performance metrics, these are well known methods used in the art of evaluating marketing strategies. The combination doesn't explicitly teach metrics to evaluate accomplishment of business objectives, but it would have been obvious to set forth a metric or standard to strive for in order to make the determination of effectiveness less subjective. For example, if an advertisement doesn't generate a certain amount of revenue, it is cut. The combination also doesn't explicitly teach identifying available tools and selecting based on business objectives, since both are concerned with evaluating current advertising efforts and determining if they are effective it would have been obvious to identify other available advertisements to meet business objectives to use in the case that an ad was found to be ineffective, after all the overall goal of d'Eon is to find the most effective advertisement to generate the most revenue.

In addition, while the combination of d'Eon and Robinson teaches gathering performance information regarding internet marketing performance, the combination does not explicitly teach a business enterprise selecting at least two marketing communications activities selected from the group of: magazine, newspaper, radio, television and website. However, based on Cannon (column 6, lines 1-14), it is old and well known to gather and analyze other types of advertising media such as television, magazines and newspapers to determine effectiveness. It would have been obvious to one of ordinary skill in the art at the time of the invention that a business would carry out more than one type of advertising/marketing communications and would gather and analyze performance data for each type of marketing communications to gain useful information to make advertising efforts more effective.

As per **claim 14**, d'Eon et al teaches selecting marketing communications activity (column 2, lines 45-55); collecting performance data of the selected marketing communications activity relative to business objectives of said business enterprise (column 4, lines 23-34 – the advertisement activity is collected); processing the marketing communications activity performance activity relative to business objectives of said business enterprise (column 6, lines 16-67 – the data collected is correlated into tables to show the number of impressions associated with each advertisement to indicate effectiveness); evaluating the processed performance data of all marketing communications activity relative to business objectives of said business enterprise (column 6, lines 44-67 – data is correlated into tables to show effectiveness of the advertisement), but does not explicitly teach reacting concurrently with said evaluation by modifying if necessary ongoing marketing communications activity. Robinson teaches modifying or changing advertisements using a rotation schedule to maximize advertising

effectiveness based on predicted likelihood that the user will be interested in the given ad (column 4, lines 8-67). Since d'Eon teaches assessing the effectiveness of Internet advertisements to more efficiently allocate Internet advertising resources, it would have been obvious to one of ordinary skill in the art at the time of the invention to incorporate Robinson's real-time analysis of the effectiveness of web advertisements to modify the marketing activity. The incorporation of the real-time updating would ensure the most effective advertising or marketing material is being used.

In addition, while the combination of d'Eon and Robinson teaches gathering performance information regarding internet marketing performance, the combination does not explicitly teach a business enterprise selecting at least two marketing communications activities selected from the group of: magazine, newspaper, radio, television and website. However, based on Cannon (column 6, lines 1-14), it is old and well known to gather and analyze other types of advertising media such as television, magazines and newspapers to determine effectiveness. It would have been obvious to one of ordinary skill in the art at the time of the invention that a business would carry out more than one type of advertising/marketing communications and would gather and analyze performance data for each type of marketing communications to gain useful information to make advertising efforts more effective.

As per **claim 15**, d'Eon teaches the evaluating of the performance data of marketing communications activity comprises evaluating relative to the expected contribution of marketing communications to the business objectives of the business enterprise (column 7, lines 7-14 – columns are displayed showing average revenue generated from each advertisement – the evaluation of the advertisement is based on the monetary contribution of the advertisement).

Conclusion

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Roderick, US 6,122,648 – method apparatus and system for improved content management and delivery

Online Banner Ads as Effective as Television Ads in Building Brand Awareness, New Ipsos-ASI Research Confirms. Business Wire article.

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Johnna R. Loftis whose telephone number is 571-272-6736. The examiner can normally be reached on M-F 8am-4:30pm.

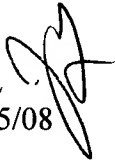
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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tariq Hafiz can be reached on 571-272-6729. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

JL
1/5/08




C. MICHELLE TARAE
PRIMARY EXAMINER